

Andrew Joseph Smith filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in state custody.

In November 2017, after a jury trial, Mr. Smith was convicted of child pornography charges in violation of R.I. Gen. Laws § 11-9-1.3(a)(4) and R.I. Gen. Laws § 11-9-1.3(b) (R.I. Superior Court Docket: P2-2015-0553A). On January 22, 2018, the Rhode Island Superior Court sentenced Mr. Smith to five-year imprisonment, three years to serve, the balance suspended with probation. He is currently serving this sentence at the Adult Correctional Institutions. Mr. Smith filed a notice of appeal to the Rhode Island Supreme Court on January 18, 2018, four days before the R.I. Superior Court entered a judgment of conviction in Smith's case.

Four days later on January 22, 2018, Mr. Smith also filed a Petition for a Writ of Habeas Corpus in this Court. The State of Rhode Island moves to dismiss the Petition. ECF No. 3.

This Court must dismiss Mr. Smith's Petition because he has not exhausted his state court remedies as required by federal law.

An application for a writ of habeas corpus . . . shall not be granted unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State . . .").

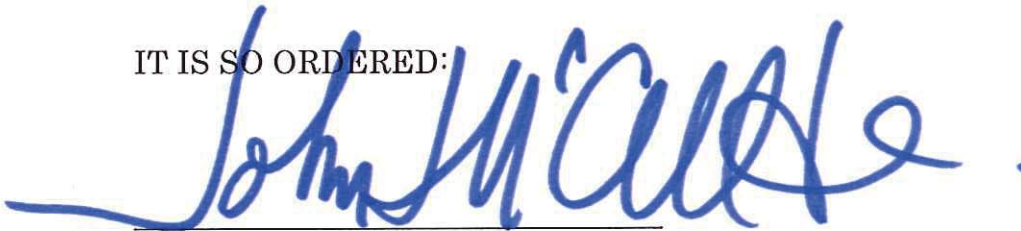
28 U.S.C. § 2254(b)(1)(A); see also *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999)

("Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court. In other words, the state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas petition.").

Because Mr. Smith has neither perfected his appeal to the R.I. Supreme Court, nor filed a Petition to the state court for post-conviction relief, his federal habeas corpus Petition in this Court is not timely and therefore is dismissed.

The State of Rhode Island's Motion to Dismiss (ECF No. 3) is GRANTED.¹

IT IS SO ORDERED:

A handwritten signature in blue ink, reading "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.
United States District Judge

March 12, 2018

¹ Mr., Smith also filed an "Emergency Relief Request" (ECF No. 6), which is DENIED as moot in light of the Court's dismissal of the Petition.